

- The FCC has the authority to compile and update a comprehensive database of physical infrastructure assets.

RECOMMENDATION 6.6: The FCC should establish a joint task force with state, Tribal and local policymakers to craft guidelines for rates, terms and conditions for access to public rights-of-way.

Because local, state, Tribal and federal governments control access to important rights-of-way and facilities, a comprehensive broadband infrastructure policy necessarily requires a coordinated effort among all levels of government.

There is wide diversity among state and local policies regarding access to and payment for accessing public rights-of-way. Many jurisdictions charge a simple rental fee. Other jurisdictions use other compensation schemes, including per-foot rentals, one-time payments, in-kind payments (such as service to public institutions or contributions of fiber to city telecommunications departments) and assessments against general revenues.³³ Some jurisdictions calculate land rental rates based on local real estate "market value" appraisals.

Many states have limited the rights-of-way charges that municipalities may impose, either by establishing uniform rates (Michigan) or by limiting fees to administrative costs (Missouri).³⁴ Other states, including South Carolina, Illinois and Florida, do not allow municipalities to collect rights-of-way fees directly; instead, the state compensates local governments for the use of their rights-of-way with proceeds from state-administered telecommunications taxes.

Broadband service providers often assert that the expense and complexity of obtaining access to public rights-of-way in many jurisdictions increase the cost and slow the pace of broadband network deployment.³⁵ Representatives of state and local governments dispute many of these contentions.³⁶ However, nearly all agree that there can and should be better coordination across jurisdictions on infrastructure issues.³⁷

Despite past efforts by the National Telecommunications and Information Administration (NTIA) and the National Association of Regulatory Utility Commissioners (NARUC),³⁸ a coordinated approach to rights-of-way policies has not taken hold. There are limits to state and local policies; Section 253 of the Communications Act prohibits state and local policies that impede the provision of telecommunications services while allowing for rights-of-way management practices that are nondiscriminatory, competitively neutral, fair and reasonable.³⁹ However, disputes under Section 253 have lingered for years, both before the FCC and in federal district courts.⁴⁰

In consultation and partnership with state, local and Tribal authorities, the FCC should develop guidelines for public rights-of-way policies that will ensure that best practices from state and local government are applied nationally. For example, establishing common application information and inspection

protocols could lower administrative costs for the industry and governmental agencies alike. Fee structures should be consistent with the national policy of promoting greater broadband deployment. A fee structure based solely upon the market value of the land being used would not typically take into account the benefits that the public as a whole would receive from increased broadband deployment, particularly in unserved and underserved areas. In addition, broadband network construction often involves multiple jurisdictions. The timing of the process and fee calculations by one local government may not take into account the benefits that constituents in neighboring jurisdictions would receive from increased broadband deployment. The cost and social value of broadband cut across political boundaries; as a result, rights-of-way policies and best practices must reach across those boundaries and be developed with the broader public interest in mind.

To help develop this consistent rights-of-way policy, the FCC should convene a joint task force of state, local and Tribal authorities with a mandate to:

- Investigate and catalog current state and local rights-of-way practices and fee structures, building on NTIA's 2003 compendium and the 2002 NARUC Rights-of-Way Project.
- Identify public rights-of-way and infrastructure policies and fees that are consistent with the national public policy goal of broadband deployment and those that are inconsistent with that goal.⁴¹
- Identify and articulate rights-of-way construction and maintenance practices that reduce overall capital and maintenance costs for both government and users and that avoid unnecessary delays, actions, costs and inefficiencies related to the construction and maintenance of broadband facilities along public rights-of-way.⁴²
- Recommend appropriate guidelines for what constitutes "competitively neutral," "nondiscriminatory" and "fair and reasonable" rights-of-way practices and fees.
- Recommend a process for the FCC to use to resolve disputes under Section 253. Creating a process should expedite resolution of public rights-of-way disputes in areas either unserved or underserved by broadband.

The FCC should request that the task force make its recommendations within six months of the task force's creation. These recommendations should then be considered by the FCC as part of a proceeding that seeks industry-wide comment on these issues.